

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**KATHRYN L. WATERS,**  
**Plaintiff**

**v.**

**PENNSYLVANIA HUMAN  
RELATIONS COMMISSION,**  
**Defendant**

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**No. 13-cv-02652**

**(Judge Kane)**

**(Magistrate Judge Schwab)**

**ORDER**

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

On December 18, 2015, Magistrate Judge Schwab issued a Report and Recommendation (Doc. No. 57), in which she recommends that the Court deny Defendant's motion for summary judgment (Doc. No. 42). According to Magistrate Judge Schwab, triable issues of material fact remain regarding the process by which Defendant Pennsylvania Human Relations Commission (PHRC) selected its new Executive Director and the reasons that Plaintiff Kathryn Waters was not selected for the position. (See Doc. No. 57.) In particular, Magistrate Judge Schwab considered the deposition testimony of former PHRC Commissioner Sylvia Waters and the declaration of former PHRC Commissioner Daniel Woodall to find that Plaintiff is entitled to a trial on her allegations that the PHRC passed over Plaintiff for the position because of her race. (Id. at 23-26, 28, 31-32.)

Defendant has filed objections to the Report and Recommendation, arguing that: (1) Magistrate Judge Schwab improperly accepted allegations of fact from the complaint as true

without any evidentiary support<sup>1</sup> (Doc. No. 61 at 3); (2) that Magistrate Judge Schwab impermissibly relied on Commissioner Woodall's declaration despite documentary evidence to the contrary (id. at 7); (3) that Magistrate Judge Schwab incorrectly found a triable issue of fact related to race discrimination based solely on contested deposition testimony that one PHRC commissioner made racist remarks (id. at 9); and (4) that Magistrate Judge Schwab incorrectly found a triable issue of fact regarding Plaintiff's allegation of pretext-based hiring procedures based on the same contested deposition testimony (id. at 10-11).

The Court finds that Magistrate Judge Schwab comprehensively and correctly addressed the substance of Defendant's objections in the Report and Recommendation itself. (See e.g., Doc. No. 57 at 24) ("Based on [a PHRC commissioner's] statements that he did not want a minority to fill the position of Executive Director, a reasonable jury could conclude that race was a motivating factor in the employment decision."); (see also id. at 31) ("There are genuine factual disputes about whether Waters scored high enough to advance to the second round [of consideration for the position]. Although the PHRC presented evidence that she did not, she presented evidence that she did."). Accordingly, the Court will not write separately to address these objections.

**AND SO**, upon independent review of the record and the applicable law, on this 10th day of March 2016, **IT IS HEREBY ORDERED THAT:**

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<sup>1</sup> The Court observes that many of the allegedly unsupported factual allegations cited by Magistrate Judge Schwab appear in a section of the Report and Recommendation reserved for "Waters's Version" of the hiring procedure. (See Doc. Nos. 61 at 5; 57 at 16-17.) To the extent that this section of Report and Recommendation does include factual averments not explicitly linked to testimonial or documentary evidence, the Court notes that this section is included as context separate and apart from Magistrate Judge Schwab's legal conclusions, which appear later in the Report and Recommendation. The section titled "Waters's Version" directly follows a separate context section entitled, "The PHRC's Version."

1. Magistrate Judge Schwab's Report and Recommendation (Doc. No. 57), is **ADOPTED**;
2. Defendant's motion for summary judgment (Doc. No. 42) is **DENIED**; and
3. A telephone conference is scheduled for April 13, 2016, at 10:00 a.m. to discuss scheduling and outstanding pre-trial issues. Plaintiff's counsel shall initiate this conference call. The telephone number of the Court is (717) 221-3990.

S/ Yvette Kane  
Yvette Kane, District Judge  
United States District Court  
Middle District of Pennsylvania